

MAM

12-CV-5344

## CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS  
Marlin Weyant(b) County of Residence of First Listed Plaintiff Montgomery  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)  
Vicki Piontek, Esq.  
951 Allentown Road, Lansdale, PA 19446 (717) 533-7472

- II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
  - 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

DEFENDANTS  
Portfolio Recovery Associates, John Does 1-10, XYZ Corporations  
1-10County of Residence of First Listed Defendant Norfolk, VA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
Thomas R. Dominczyk, Esq.  
5 Walter E. Foran Blvd., Suite 2007, Flemington, NJ 08822  
(908) 237-4550

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        | PTF   | DEF  |
|---|----------------------------|----------------------------|---|--|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORT	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL PROPERTY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
				<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
				<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
				<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN  
 1 Original Proceeding

(Place an "X" in One Box Only)

 2 Removed from State Court  3 Remanded from Appellate Court 4 Reinstated or Reopened  5 Transferred from another district (specify) \_\_\_\_\_ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 USC 1692Brief description of cause:  
Fair Debt Collection Practices Act

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 22,401.00

DOCKET NUMBER MDL No. 2295

VIII. RELATED CASE(S)  
IF ANY

(See instructions):

JUDGE John A. Houston

DOCKET NUMBER MDL No. 2295

SEP 18 2012

DATE

09/18/2012

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

*Thomas R. Dominczyk*

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE

**MAN**

## UNITED STATES DISTRICT COURT

**12****534**

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Montgomery County, PennsylvaniaAddress of Defendant: 120 Corporate Blvd., Suite 100, Norfolk, Virginia 19422Place of Accident, Incident or Transaction: Montgomery County, Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No 

Does this case involve multidistrict litigation possibilities?

RELATED CASE, IF ANY: Hon. John A. Houston

Case Number: MDL No. 2295Judge U.S.D.C., S.D. Cal.Date Terminated: Still pendingYes  No 

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No 

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No 

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No 

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No CIVIL: (Place  in ONE CATEGORY ONLY)A. *Federal Question Cases:*

- Indemnity Contract, Marine Contract, and All Other Contracts
- FELA
- Jones Act-Personal Injury
- Antitrust
- Patent
- Labor-Management Relations
- Civil Rights
- Habeas Corpus
- Securities Act(s) Cases
- Social Security Review Cases

11.  All other Federal Question Cases(Please specify) Fair Debt Collection Practices ActB. *Diversity Jurisdiction Cases:*

- Insurance Contract and Other Contracts
- Airplane Personal Injury
- Assault, Defamation
- Marine Personal Injury
- Motor Vehicle Personal Injury
- Other Personal Injury (Please specify) \_\_\_\_\_
- Products Liability
- Products Liability — Asbestos
- All other Diversity Cases

(Please specify) \_\_\_\_\_

I, Thomas R. Dominczyk,

counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: September 18, 2012

Attorney-at-Law

85248

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: September 18, 2012

Attorney-at-Law

85248

SEP 18 2012

Attorney I.D.#

CIV. 609 (5/2012)

**MAM**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Marlin Weyant

CIVIL ACTION

v.

**12****5344**

Portfolio Recovery Associates, et al

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) \*\*Case is related to MDL case #2295 pending in the USDC, SD Cal. (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

September 18, 2012Date(908) 237-4550Thomas R. DominczykAttorney-at-law(908) 237-4551Portfolio Recovery AssociatesAttorney fortrd@mnlawpc.comTelephoneFAX NumberE-Mail Address

(Civ. 660) 10/02

SEP 18 2012

\$350  
WAM

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA	
<p>MARLIN WEYANT, Plaintiff, vs. PORTFOLIO RECOVERY ASSOCIATES, JOHN DOES 1-10 AND XYZ CORPORATIONS, Defendants.</p>	<p>Civil Action No. (Removal)      <b>12 5344</b></p>

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**NOTICE OF REMOVAL OF  
CIVIL ACTION FROM STATE COURT**

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Defendant, Portfolio Recovery Associates, LLC (incorrectly plead as "Portfolio Recovery Associates" hereinafter the "Defendant"), by and through their undersigned counsel, respectfully represents as follows:

1. Portfolio Recovery Associates, LLC is a Defendant in the above entitled action.
2. On or about August 22, 2012, Plaintiff Marlin Weyant (hereinafter referred to as "Plaintiff") filed suit against the Defendant. The suit was filed in the Court of Common Pleas of Montgomery County, Pennsylvania, and was assigned docket number 2012-20363. A true copy of the Complaint is attached hereto as Exhibit "A".
3. The Complaint seeks, inter alia, damages for injuries allegedly arising from the collection of debt and seeks damages under the Fair Debt Collection Practices Act (hereinafter referred to as the "FDCPA") 15 U.S.C. § 1692 et seq. (See Exhibit A).
4. This Court has original jurisdiction over the above entitled action pursuant to 28 U.S.C. § 1331, as it involves a federal question with regards to the alleged violations of the

FDCPA, 15 U.S.C. § 1692 et seq.

5. This action must therefore be removed to this Honorable Court pursuant to 28 U.S.C. § 1441(a).

6. Furthermore, this court will have pendent jurisdiction over any other state claims asserted or that may be asserted by the Plaintiff.

7. The Complaint was served upon Defendant on August 27, 2012.

8. This notice is timely filed with this Court within thirty (30) days after service of the Complaint on Defendant in the above entitled action pursuant to 28 U.S.C. § 1446(b).

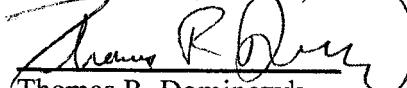
9. Attached hereto as Exhibit B is a true copy of the Notice of Filing of Removal which was sent to the Plaintiff on this date.

10. Attached are the following process, pleadings, and orders served upon Defendants in this action which are known to me:

a. Plaintiff's Summons and Complaint – Exhibit "A"

WHEREFORE, Defendant Portfolio Recovery Associates, LLC, respectfully requests that the above entitled action be removed from the Court of Common Pleas of Montgomery County, Pennsylvania.

Respectfully submitted,  
Maurice & Needleman, PC



Thomas R. Dominczyk  
Maurice & Needleman, P.C.  
5 Walter E. Foran Blvd., Suite 2007  
Flemington, NJ 08822  
(908) 237-4550  
(908) 237-4551(fax)  
Attorneys for Defendant  
Portfolio Recovery Associates, LLC

Dated: September 18, 2012

**Exhibit “A”**

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

MARLIN WEYANT

vs.

PORTFOLIO RECOVERY ASSOCIATES

NO. 2012-20363

RECEIVED

AUG 27 2012

By General Counsel

NOTICE TO DEFEND - CIVIL

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE  
MONTGOMERY BAR ASSOCIATION  
100 West Airy Street (REAR)  
NORRISTOWN, PA 19404-0268

(610) 279-9660, EXTENSION 201

PRIF0034  
R 10/11

IN THE COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

Marlin Weyant :  
c/o Piontek Law Office :  
951 Allentown Road :  
Lansdale, PA 19446 :  
Plaintiff :  
2012-20363  
Vs.  
PORTFOLIO RECOVERY ASSOCIATES : Jury Trial Demanded  
120 CORPORATE BLVD., SUITE 100 :  
NORFOLK VA 23502 :  
and  
John Does 1-10 :  
and  
X,Y,Z Corporations, :  
Defendant(s) :

**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THE COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE DEFENDANT. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERENCE SERVICE  
MONTGOMERY COUNTY BAR ASSOCIATION  
100 West Airy Street (REAR), NORRISTOWN, PA 19401  
(610) 279-9660, EXTENSION 201

Montgomery County Legal Aid Services  
625 Swede Street, Norristown, PA 19401  
610-275-5400

IN THE COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

Marlin Weyant :  
c/o Piontek Law Office :  
951 Allentown Road : 2012-20363  
Lanadale, PA 19446 :  
Plaintiff :  
Vs. :  
PORTFOLIO RECOVERY ASSOCIATES : Jury Trial Demanded  
120 CORPORATE BLVD., SUITE 100 :  
NORFOLK VA 23502 :  
and :  
John Does 1-10 :  
and :  
X,Y,Z Corporations, :  
Defendant(s) :

**COMPLAINT**

**INTRODUCTION**

1. This is a lawsuit for damages brought by an individual consumer for Defendant(s)' alleged violations of the Telephone Consumer Protection Act, 47 USC § 227 et. seq. (hereinafter "TCPA"), as well as for Defendant(s) alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq. (hereinafter "FDCPA").

**JURISDICTION AND VENUE**

2. All previous paragraphs of this complaint are incorporated by reference and made a part of this complaint
3. Venue is proper in this jurisdiction because Defendant(s) regularly transact(s) business throughout this jurisdiction.
4. Defendant obtains the benefit(s) of regularly transacting business in this jurisdiction.
5. Key witnesses are located in this jurisdiction.
6. Similarly affected consumers are located in this jurisdiction.

**PARTIES**

7. All previous paragraphs of this complaint are incorporated by reference and made a part of this complaint.
8. Plaintiff is Marlin Weyant, an adult individual and resident of Pennsylvania, with a current mailing address of c/o Piontek Law Office, 951 Allentown Road, Lansdale, PA 19446.
9. Defendant is PORTFOLIO RECOVERY ASSOCIATES, a corporation, engaged in consumer debt collection with a principle place of business located at 120 CORPORATE BLVD., SUITE 100, NORFOLK VA 23502.
10. Defendants may include John Does 1-10, persons whose names and identities are not known to Plaintiff at this time, or whose liability is not known, but which may become known to Plaintiff following discovery. It is believed and averred that such Does played a substantial role in the commission of the acts described in this Complaint.
11. Defendants may include X,Y,Z Corporations, business entities whose names and identities are not known to Plaintiff at this time, or whose liability is not known, but which may become known to Plaintiff following discovery. It is believed and averred that such entities played a substantial role in the commission of the acts described in this Complaint.

**COUNT ONE: VIOLATION OF THE TELEPHONE**

**CONSUMER PROTECTION ACT (TCPA) 47 USC § 227 ET. SEQ.**

12. The previous paragraphs are incorporated by reference and made a part of this complaint.

13. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA), in response to a growing number of consumer complaints regarding certain telemarketing practices.

14. The TCPA regulates, among other things, the use of automated telephone equipment, or “autodialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.

15. 47 U.S.C. § 227(b) states in pertinent part:

(b) Restrictions on use of automated telephone equipment

(1) **Prohibitions**

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—  
\*\*\*

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(3) **Private right of action**

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

- (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,
- (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or
- (C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph

- (B) of this paragraph.

16. On January 4, 2008, the FCC released a Declaratory Ruling confirming that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of a creditor) are permitted only if the calls are made with the "prior express consent" of the called party. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 ("FCC Declaratory Ruling")*, 23 F.C.C.R. 559, 23 FCC Rd. 559,43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

17. The FCC "emphasize[d] that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed." *FCC Declaratory Ruling*, 23 F.C.C.R. at 564-65 (10).

18. According to findings by the Federal Communication Commission ("FCC"), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).
19. Under the TCPA and pursuant to the FCC's January 2008 Declaratory Ruling, the burden is on Defendants to demonstrate that Plaintiff provided express consent within the meaning of the statute. *See FCC Declaratory Ruling*, 23 F.C.C.R. at 565 (10).
20. At all times relevant, Plaintiff was a "person" as defined by 47 U.S.C. § 153(10).
21. Prior to the events lead to the filing of this civil action, Plaintiff engaged in a consumer credit transaction which was the subject of Defendant's collection activity.
22. Plaintiff's account went into collections, and the account was referred to Defendant(s) for the purpose of collection.
23. At no time did Plaintiff provide Defendant(s) with Plaintiff's cell phone number.

24. At no time did Plaintiff provide the original alleged creditor for the account that was the subject of Defendant's collection activity with Plaintiff's cell phone number.

25. Defendant contacted Plaintiff on Plaintiff's cellular telephone. Plaintiff received one or more calls from Defendant on Plaintiff's cellular phone.

26. It is believed and averred that Defendant(s) used some method or mechanism to look up Plaintiff's cell phone number in order to facilitate the calls.

27. It is believed and averred that one or more of the telephone calls by Defendant to Plaintiff on Plaintiff's cellular telephone occurred via an "automatic telephone dialing system," as defined by 47 U.S.C. § 227(a)(1), and all calls that are the subject of this Complaint occurred within four years of the filing of this Complaint.

28. Because these calls were prerecorded, Plaintiff had no ability to request that the calls end or to voice Plaintiff's complaints to a real person.

29. It is believed and averred that one or more of the telephone calls placed by Defendant to Plaintiff's cellular telephone were made using an "automatic telephone dialing system," as defined by 47 U.S.C. § 227 et. seq.

30. Such automated calls were made by Defendant(s) to Plaintiff's cellular telephone service as defined in 47 U.S.C. § 227(b)(1)(A)(iii).

31. The complained of telephone calls did not constitute calls not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

32. During the transaction that resulted in the alleged debt owed, Plaintiff did not provide a wireless or cellular number to Defendant, nor otherwise provide express consent to receive automated calls by Defendant on Plaintiff's cellular telephone.

33. Plaintiff did not provide "express consent" allowing Defendant, or the original creditor to place telephone calls to Plaintiff's cellular phone utilizing an "automatic telephone dialing system," within the meaning of 47 U.S.C. § 227(b)(1)(A).

34. Plaintiff did not list a cellular phone number in or on any documents at any time during the transaction that resulted in the Purported Debt.

35. Plaintiff did not verbally provide Defendant(s), or any other party, with a cellular phone number at any time during the transaction that resulted in the Purported Debt, or thereafter.

36. Defendant's telephone calls to Plaintiff's cellular phone utilizing an "automatic telephone dialing system" for non-emergency purposes and in the absence of Plaintiff's prior express consent violated 47 U.S.C. § 227(b)(1)(A).

37. Under the TCPA and pursuant to the FCC's January 2008 Declaratory Ruling, the burden is on Defendant to demonstrate that Plaintiff provided express consent within the meaning of the statute.
38. Plaintiff believes and avers that Plaintiff received no less than 30 automated calls on Plaintiff's cell phone from Defendant(s), and probably more that came in, but Plaintiff was not able to document.
39. Plaintiff received automated calls from Defendant(s) on his cell phone within a short time after having changed his cell phone number to avoid Defendant(s) automated calls on his cell phone.

**COUNT TWO: VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT,**

**15 USC 1692 f, et. seq.**

40. All previous paragraphs of this complaint are incorporated by reference and made a part of this portion of the complaint.

41. Plaintiff is a consumer debtor as defined by the Fair Debt Collections Practices Act (FDCPA), 15 USC 1692 et. Seq.

42. Defendant is a debt collector as defined by the FDCPA, 15 USC 1692 et. seq.

43. At all times mentioned herein, Defendant(s) was attempting to collect on an alleged consumer debt against Plaintiff.

44. 15 USC 1692 f of the FDCPA prohibits a debt collector from engaging in any unlawful, illegal or unconscionable collection activity while Defendant(s) was attempting to collect a consumer debt from Plaintiff.

45. By violating TCPA, Defendant(s) also violated 15 USC 1692 f, et, seq., by engaging in unlawful, illegal and unconscionable collection activity.

**COUNT THREE: VIOLATION OF THE FAIR DEBT COLLECTION**

**PRACTICES ACT, 15 USC 1692 f, et. seq.**

**Unauthorized Communication With 3<sup>rd</sup> Parties; or in the Alternative Failure to**

**Make Required Disclosures under the FDCPA**

46. All previous paragraphs of this complaint are incorporated by reference and made a part of this portion of the complaint.
47. Plaintiff is a consumer debtor as defined by the Fair Debt Collections Practices Act (FDCPA), 15 USC 1692 et. Seq.
48. Defendant is a debt collector as defined by the FDCPA, 15 USC 1692 et. seq.
49. At all times mentioned herein, Defendant(s) was attempting to collect on an alleged consumer debt against Plaintiff.
50. Within the applicable statute of limitations, Defendant or its designated employee, agent or representative contacted Plaintiff by telephone at Plaintiff's parents' home telephone, and left certain messages with Plaintiff's parents for Plaintiff to call Defendant(s) back.

51. The above referenced message(s) was / were a communication as defined by 15 USC 1692(a)(2). See Foti v. NCO Financial Systems, Inc., 424 F. Supp.2d 643 (S.D.N.Y. 2006); INMAN v. NCO FINANCIAL SYSTEMS, INC, United States District Court for the Eastern District of Pennsylvania, Docket Number NO. 08-5866; Edwards v. NIAGARA CREDIT SOLUTIONS, INC., United States Court of Appeals for the Eleventh Circuit, Docket Number 08-17006. See GRYZBOWSKI v. I.C. SYSTEM, INC 3:CV-08-1884, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA (2010).

52. Every telephone message left by a debt collector must give meaningful disclosure of the debt collector's identity, as well as state that the purpose of the call is to collect a debt. See Foti v. NCO Financial Systems, Inc., 424 F. Supp.2d 643 (S.D.N.Y. 2006); INMAN v. NCO FINANCIAL SYSTEMS, INC, United States District Court for the Eastern District of Pennsylvania, Docket Number NO. 08-5866; Edwards v. NIAGARA CREDIT SOLUTIONS, INC., United States Court of Appeals for the Eleventh Circuit, Docket Number 08-17006. See GRYZBOWSKI v. I.C. SYSTEM, INC 3:CV-08-1884, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA (2010).

53. Defendant(s)' message to Plaintiff at Plaintiff's parent's home telephone did not disclose the nature and purpose of the call or that the call was from a debt collector attempting to collect a debt.

54. In the alternative, Defendant(s)' messages to Plaintiff at Plaintiff's home telephone number did disclose the nature and purpose of the call and that the call was from a debt collector attempting to collect a debt.

55. Defendant(s)' message to Plaintiff at Plaintiff's parent's home telephone did not disclose the identity of Defendant(s) debt collector.

56. In the alternative, Defendant(s)' messages to Plaintiff at Plaintiff's work place did disclose the identity of Defendant(s) debt collector.

57. Even if Defendant(s) did give meaningful disclosure of the nature and purpose of the call when Defendant left such messages at Plaintiff's parents' home, then Defendant(s) would have violated the provisions of the FDCPA that prohibit disclosure of such information to an unauthorized third party. Either way, Defendant(s) violated the FDCPA by leaving messages for Plaintiff with Plaintiff's parents.
58. Even if Defendant(s) did give meaningful disclosure of Defendant(s) identity when Defendant left such messages at Plaintiff's parents' home, then Defendant(s) would have violated the provisions of the FDCPA that prohibit disclosure of such information to an unauthorized third party. Either way, Defendant(s) violated the FDCPA by leaving messages for Plaintiff with Plaintiff's parents.
59. Any message left by Defendant at Plaintiff's work place would be an FDCPA violation because full disclosures are required in any communication. On the other hand, the FDCPA prohibits disclosure to un-authorized 3<sup>rd</sup> parties.
60. Defendant engaged in illegal collection activity no legitimate purpose other than to harass, annoy, abuse, and intimidate Plaintiff.

## LIABILITY

61. All previous paragraphs of this complaint are incorporated by reference and made a part of this complaint.
62. Defendant(s) is liable to Plaintiff(s) for the acts committed by its agents under the doctrine of respondeat superior because Defendant's agents were acting within the scope of their employment with Defendant.
63. In the alternative, Defendant is liable to Plaintiff(s) under the doctrine of negligent supervision.
64. In the alternative, Defendant is liable to Plaintiff(s) under the doctrine of the non-deligible duty.
65. In the alternative, Defendant(s) is liable for the conduct of its agents / employees under the theory of joint and several liability because Defendant and its agents / employees were engaged in a joint venture and were acting jointly and in concert.
66. Any mistake made by Defendant would have included a mistake of law.
67. Any mistake made by Defendant would not have been a reasonable bona fide mistake.

## DAMAGES

68. All previous paragraphs of this complaint are incorporated by reference and made a part of this portion of the complaint.

69. At least \$1.00 actual damages, including but not limited to phone, fax, stationary, postage, etc.

70. Plaintiff believes and avers that Plaintiff is entitled to \$1,000.00 statutory under the FDCPA 15 USC 1692k, and under TCPA.

71. Plaintiff believes and avers that Plaintiff is entitled to at least \$500.00 per call that Plaintiff received from Defendant(s) in violation of TCPA.

72. Plaintiff believes and avers that there was at least 30 separate automated telephone calls from Defendant(s) to Plaintiff's cell phone, thereby warranting \$15,000.00 in statutory damages.

73. Plaintiff suffered emotional distress as a result of Defendant(s) money-making, law-breaking activity, with a Dollar value to be proven at trial.

74. For purposes of a default judgment, Plaintiff believes and avers that the value of such distress is no less than \$5,000.00.

**ATTORNEY FEES**

75. All previous paragraphs of this complaint are incorporated by reference and made a part of this complaint.

76. Plaintiff is entitled to reasonable attorney fees in this matter at a rate of no less than \$350 per hour, or other rate that this Honorable Court deems just and fare, pursuant the fee shifting provision of TCPA and FDCPA.

77. Plaintiff's attorney fees of \$1,400.00 at a rate of \$350.00 per hour, are enumerated below.

- |   |   |
|---|---|
| a. Consultation with client<br>on multiple occasions including<br>but not limited to 7/23/12 and 8/5/12 | 1 |
| b. Drafting, editing and review and service of complaint<br>and related documents                       | 1 |
| c. Follow up With Defense   | 2 |

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$$4 \times \$350 = \$1,400.00$$

78. Plaintiff's attorney fees continue to accrue as the case move forward.

79. The above stated attorney fees include prosecution of this complaint to the date of the instant filing and reasonable follow up.

**OTHER RELIEF**

80. All previous paragraphs of this complaint are incorporated by reference and made a part of this portion of the complaint.

81. Plaintiff seeks injunctive relief barring further unlawful collection activity.

82. Plaintiff seeks such other relief as this Honorable Court may deem just and proper.

83. Plaintiff requests a jury trial in this matter.

84. Plaintiff demands a jury trial in this matter.

Wherefore, Plaintiff demands judgment against Defendant(s) in the amount of no less than \$22,401.00.

\$1.00 actual damages more or less for postage, stationary , fax, etc.

\$1,000.00 statutory damages under the FDCPA

\$15,000 statutory damages under TCPA, or such other amount to be determined by the Court after discovery.

\$5,000 emotional distress

\$1,400.00 attorney fees

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\$22,401.00

Plaintiff seeks leave to amend the amount of statutory damages for the TCPA claims following discovery. Plaintiff seeks such other relief as the Honorable Court deems just and fair.

/s/ Vicki Piontek

8/21/2012

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Vicki Piontek, Esquire  
Supreme Court ID Number 83559  
Attorney for Plaintiff  
951 Allentown Road  
Lansdale, PA 19446  
877-737-8617  
Fax: 866-408-6735  
palaw@justice.com

Date

IN THE COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

Marlin Weyant  
c/o Piontek Law Office  
951 Allentown Road  
Lansdale, PA 19446

Plaintiff

vs

PORTFOLIO RECOVERY ASSOCIATES : Jury Trial Demanded

120 CORPORATE BLVD SUITE 100

NORFOLK VA 23502

and

John Does 1-10

and

X.Y.Z Corporations

Defendant(s)

VERIFICATION

- I, Marlin Weyant, have read the attached complaint. The facts stated in the complaint are true and accurate to the best of my knowledge, understanding and belief.

  
Marlin Weyant

2/13/12  
Date

**Exhibit “B”**

**MAM**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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MARLIN WEYANT, Plaintiff, vs. PORTFOLIO RECOVERY ASSOCIATES, JOHN DOES 1-10 AND XYZ CORPORATIONS, Defendants.	Civil Action No. (Removal) <b>12 5344</b>
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**NOTICE OF FILING OF REMOVAL OF CIVIL ACTION  
FROM STATE COURT**

TO:  
VICKI PIONTEK, ESQ.  
951 ALLENTOWN ROAD  
LANSDALE, PA 19446

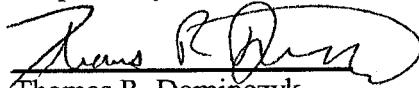
PROTHONOTARY  
MONTGOMERY COUNTY COURT OF  
COMMON PLEAS  
PO BOX 311  
NORRISTOWN, PA 19404-0311

PLEASE TAKE NOTICE that on September 18, 2012, Portfolio Recovery Associates, LLC, (incorrectly plead as "Portfolio Recovery Associates") Defendant in the above entitled action (hereinafter referred to as the "Defendant"), filed a Notice of Removal, copies of which are attached hereto, of the above entitled action to the United States District Court for the Eastern District of Pennsylvania.

You are also advised that Defendant, on filing such Notice of Removal in the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, also filed and served a copy thereof to the Prothonotary of the Court of Common Pleas of Montgomery County, Pennsylvania, at the addresses noted above, to effect the removal pursuant to 28 U.S.C. 1446. By virtue of 28 U.S.C. 1446(d), the Court of Common Pleas of Montgomery County,

Pennsylvania has no further jurisdiction over this action and you should proceed no further in that Court or under its authority.

Respectfully submitted,



Thomas R. Dominczyk  
Maurice & Needleman, P.C.  
5 Walter E. Foran Blvd., Suite 2007  
Flemington, NJ 08822  
(908) 237-4550  
Attorneys for Defendant  
Portfolio Recovery Associates, LLC

Dated: September 18, 2012



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

MARLIN WEYANT,  
Plaintiff,  
vs.  
PORTFOLIO RECOVERY  
ASSOCIATES, JOHN DOES 1-10 AND  
XYZ CORPORATIONS,  
Defendants.

Civil Action No.

(Removal)

EX 5344

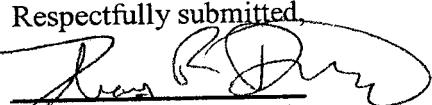
**CERTIFICATION OF SERVICE**

I, Thomas R. Dominczyk, hereby certify that on September 18, 2012, a true and correct copy of the attached NOTICE OF REMOVAL OF CIVIL ACTION FROM STATE COURT was deposited in the United States Mail to be caused to be served upon the persons set forth below via Certified Mail, RRR, to:

VICKI PIONTEK, ESQ.  
951 ALLENTOWN ROAD  
LANSDALE, PA 19446

PROTHONOTARY  
MONTGOMERY COUNTY COURT OF  
COMMON PLEAS  
PO BOX 311  
NORRISTOWN, PA 19404-0311

Respectfully submitted,

  
Thomas R. Dominczyk  
Maurice & Needleman, P.C.  
5 Walter E. Foran Blvd., Suite 2007  
Flemington, NJ 08822  
(908) 237-4550  
Attorneys for Defendant  
Portfolio Recovery Associates, LLC

Dated: September 18, 2012